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No. 444

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

CALIFORNIA STATE AUTOMOBILE ASSOCIATION,
Petitioner,

vs.

JAMES G. SMYTH, Collector of Internal Revenue of the First Internal Revenue Collection District of California,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICUS CURIAE

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October, 1949

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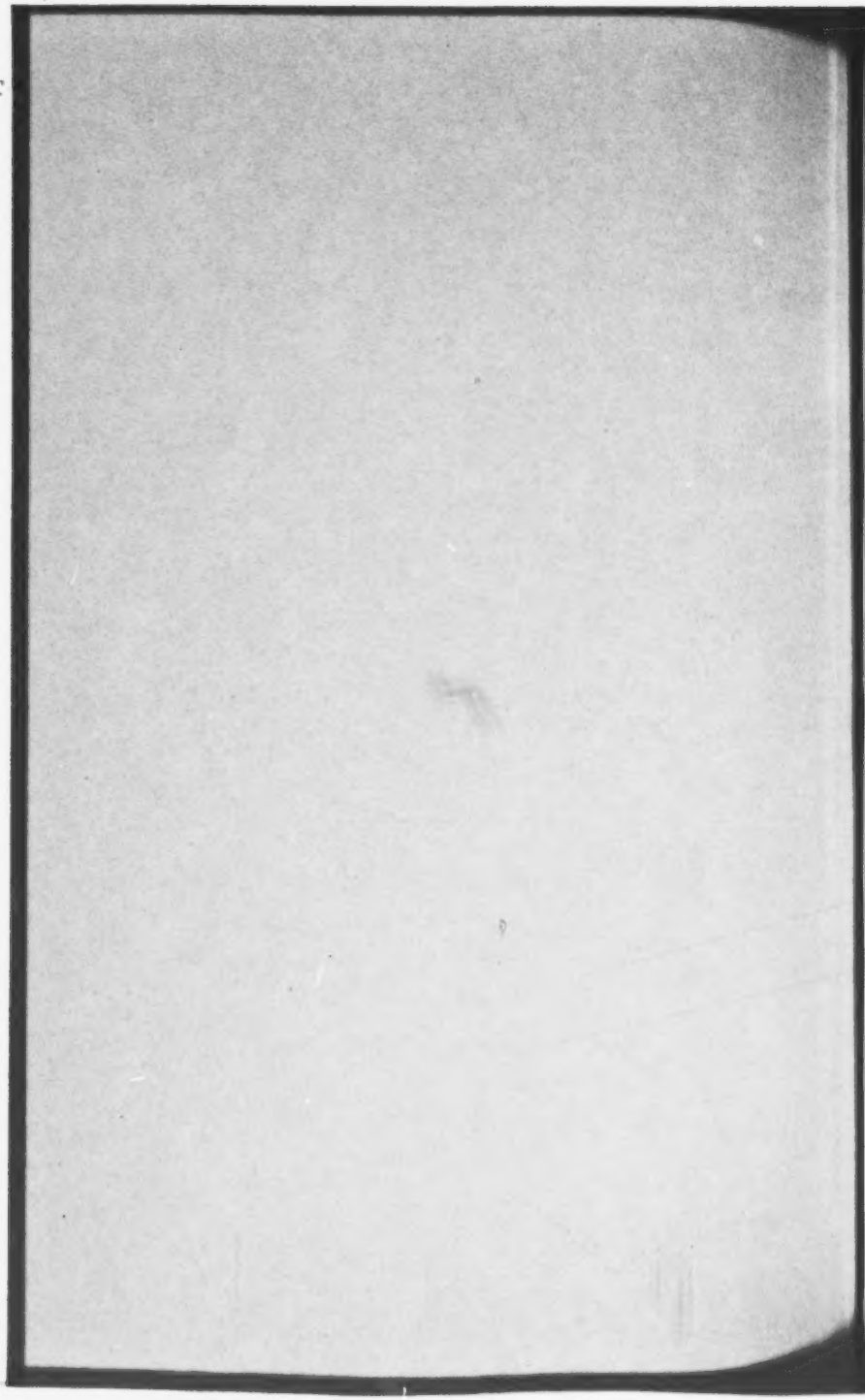

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BRIEF OF AMICUS CURIAE

INTEREST OF AMICUS CURIAE

Amicus curiae filing this brief is the Automobile Club of Washington, a corporation organized under the laws of the State of Washington authorizing the formation of corporations not formed for profit, which is similar in organization and operation to the petitioner. The final disposition of the present case will have an important bearing upon the Federal income and excess profits tax liability of the Automobile Club of Washington and upon the disposition of the case of *Automobile Club of Washington v. United States,* now pending in the United States District Court for the Western District of Washington, Northern Division, instituted for the purpose of recovering refunds of income and

excess profits taxes paid by the Automobile Club of Washington.

SUMMARY OF ARGUMENT

The question of exemption from Federal income and excess profits taxes of Automobile Clubs necessarily involves a construction of provisions of the Internal Revenue Code which have a common application to practically all Automobile Clubs, including the Automobile Club of Washington. Therefore, this Court may appropriately grant the petition for certiorari for the purpose of hearing and resolving a legal issue of general interest.

ARGUMENT

The petition for certiorari correctly states that the Court of Appeals for the Ninth Circuit has, in this case, decided an important question of Federal law which has never been settled by this Court. That question is whether clubs organized and operated for many years as has been the petitioner are exempt from Federal income and excess profits taxes under Section 101(9) of the Internal Revenue Code, relating to clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes.

The Automobile Club of Washington, like the petitioner, has been organized and operated as an automobile club for more than thirty years and, until 1943 had at all times been recognized by the Bureau of Internal Revenue as a club exempt from Federal income and excess profits

taxes under Section 101(9). Although there are some differences in the details of the activities carried on by petitioner during the years 1943 and 1944 and those carried on by the Automobile Club of Washington, basically they are so similar that a determination by this Court with respect to petitioner would probably be controlling with respect to the Automobile Club of Washington. Moreover, based upon an examination made of the organization and operation of other automobile clubs in the United States, of which there are a very great many, it is believed that they, likewise, would probably be controlled by a decision in this case with respect to exemption from Federal taxes.

For the reasons stated in the petition for certiorari we believe that the decision of the Court of Appeals for the Ninth Circuit in this case is in conflict with decisions of this Court and with the Rules of Civil Procedure for the District Courts of the United States. Specifically, we believe that the Court of Appeals failed to give proper weight to the decisions of this Court in *Helvering v. Bliss,* 293 U.S. 144 (1935) and *Helvering v. Griffiths,* 318 U.S. 371 (1943) which with clarity and emphasis reaffirmed the proposition that the re-enactment of a taxing statute by Congress, year after year, without change, in the face of a consistent and widespread interpretation and application of the statute by the Commissioner of Internal Revenue in a given manner is compelling evidence of the intention of Congress with respect to the scope and effect of the statute.

The decision of the Court of Appeals also fails to give effect to Rule 52(a) of the Rules of Civil Procedure for the District Courts of the United States which requires Appellate Courts to accept the findings of the Trial Court to the extent that there is testimony in the record consistent with the findings. In the present case the District Court found that the petitioner was a club and that it was organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, and that no part of the net earnings inured to the benefit of any private shareholder. The testimony in the case amply supported that finding and the Court of Appeals committed error in refusing to accept it.

To defer the resolving of these apparent conflicts until additional cases have been decided involving the exempt status of other automobile clubs operating within the jurisdiction of other Courts of Appeals for other circuits will, we believe, serve no good purpose and will only result in much inconvenience and hardship for all of the automobile clubs affected by the decision of the Court of Appeals in the present case, including the Automobile Club of Washington which presently has pending in the United States District Court for the Western District of Washington, Northern Division, an action entitled *Automobile Club of Washington v. United States* presenting the same basic problem of exempt status for Federal tax purposes and which is

being held in suspense upon the Court's docket, without trial, awaiting final determination of the present case.

CONCLUSION

This Court should grant the petition for certiorari herein.

Respectfully submitted,

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